

STATE OF SOUTH CAROLINA )  
)  
COUNTY OF RICHLAND )  
)  
South Carolina Department )  
of Consumer Affairs, )  
)  
Petitioner, )  
)  
v. )  
)  
Hiram Everett Carolina, Individually, )  
and Sunset Mortgage Company, LP, )  
)  
Respondents. )  
\_\_\_\_\_ )

BEFORE THE ADMINISTRATOR  
SOUTH CAROLINA DEPARTMENT  
OF CONSUMER AFFAIRS

Docket No. 0108

**ORDER**

**STATEMENT OF THE CASE**

This matter comes before me as a result of the Petitioner's filing a Notice of Hearing and Petition on or about February 28, 2001 (Exhibit 2). The hearing was originally scheduled for April 27, 2001, but was postponed until May 1, 2001. On May 1, 2001, this matter was brought before me, but was again postponed because of Respondent Carolina's automobile accident and convalescence. This hearing was completed on June 20, 2001. The Petition alleged that Respondent Carolina worked as an employee of Sunset Mortgage Company, L.P. ("Sunset") and that Sunset, a licensed mortgage loan broker, was engaged in loan origination activity in the State of South Carolina in the counties of Anderson, Charleston, Horry, Georgetown, Florence and Richland. The Petition also alleged that on May 12, 2000, Sunset submitted a mortgage loan broker application and was subsequently licensed by the Petitioner on June 5, 2000. It further alleged that on or about October 23, 2000, Sunset submitted to the Petitioner a Supplemental Form A for Respondent Carolina as an employee to manage its Georgetown, South Carolina office. This form was returned as incomplete. Moreover, the Petition further alleged that on November

15, 2000, the Petitioner received the completed form from Respondent Carolina in which he answered “yes” to the questions that dealt with whether the employee had been charged with irregularities/shortages in business accounts; whether the employee ever surrendered, resigned, canceled, or denied a professional license/credential in South Carolina; and whether the employee was ever subject to disciplinary action by a licensing or credentialing agency.

The Petition contained Respondent Carolina’s explanation for the answers to those questions. It was his claim that the offense he was charged with was failure to return a client’s money in a “timely manner.” It was his further claim that the amount in question, \$610.00, was at all times maintained in the agency escrow account and returned to the client. In the resulting complaint, the Department of Insurance ordered Mr. Carolina to pay a fine of \$4,500.00, but he made the decision not to pay the fine because his agency was going out of business and the insurance companies he had represented were no longer doing business in the area.

This is not the first time a matter involving Mr. Carolina has been brought before me. Specifically, in the matter of *Hiram Everett Carolina v. S.C. Department of Consumer Affairs*, Docket No. 9907, I entered an Order on May 7, 1999, that denied Mr. Carolina’s Petition to work for a licensed broker. The Petition for the current case (Docket No. 0108) alleged that Respondent Carolina has not complied with the Order for Docket No. 9907 and, as an additional ground, refused to certify Respondent Carolina as an employee based on lack of sufficient “character and fitness” pursuant to *S.C. Code Ann.* §§ 40-58-50 (B) and 40-58-60 (A).

Based on representations made to the Petitioner by Respondent Sunset that it would no longer employed Respondent Carolina and had so informed him of his termination on or about November 29, 2000, I signed an Order on April 2, 2000, dismissing the action as it related to

Sunset Mortgage Company (Exhibit 4).

Thus, no action is now pending against Sunset and this to some extent moots Respondent Carolina's request to be allowed to work for Sunset as a mortgage loan broker employee.

Nevertheless, this Order is issued to advise the parties of their apparent rights and responsibilities because of Respondent Carolina's unique situation and because of the Petitioner's particular relief requests.

The relief requested by Petitioner was that I issue an order requiring, without limitation, Respondent Carolina to cease and desist violating the mortgage loan broker law; finding Respondent Carolina has engaged intentionally and repeatedly in a course of conduct in violation of *S.C. Code Ann.* § 40-58-10 et seq.; barring Respondent Carolina permanently from certification to do work as an employee or owner of a licensed broker as set forth in *S.C. Code Ann.* §§ 40-58-80 (C) and (F); imposing an administrative fine on Respondent Carolina of not more than \$1,000.00 for violations arising out of the same set of transactions or occurrences pursuant to *S.C. Code Ann.* §§ 40-58-80 (B) and (C); and asking for such other and further relief as I deem appropriate.

### **FINDINGS OF FACT**

1. Respondents were given notice by copy of the Petition and Notice of Hearing on or about February 28, 2001 (Exhibit 2).

2. Exhibit 3 contains a letter dated March 26, 2001, from Sunset to Petitioner's staff attorney, Jane Shuler, and a letter dated March 27, 2001, from Sunset to Respondent Carolina, indicating that Respondent Carolina had ignored the Termination of Employment letter dated November 29, 2000 (Exhibit 1) and was still acting as an employee of Sunset Mortgage Company,

L.P. It advised him to stop portraying himself as an employee or as having any affiliation with Sunset. As a result, the Order of Dismissal of Sunset Mortgage was offered and signed by me (Exhibit 4).

3. Exhibit 5 indicates that a Supplemental Form A was submitted on behalf of Respondent Carolina on or about October 23, 2000, in which he acknowledged having been charged with irregularities/shortages in business accounts, having surrendered a professional license, and having had a licensing or other credentialing agency take disciplinary action against him. Exhibit 6 contains his statement regarding these items. Exhibit 7 contains a letter dated October 23, 2000, from Jane Shuler to Sunset requesting the forms to be completed. It also contains a letter dated November 22, 2000, from Jane Shuler to Sunset and Respondent Carolina explaining the Petitioner's reasons for refusing to allow Respondent Carolina to work for Sunset. This later letter contains language indicating Petitioner's understanding that my Order dated May 7, 1999, for Docket No. 9907 implicitly requires, according to its terms, that the Department of Insurance order to pay a fine was a precondition to Respondent Carolina's working as an employee of a mortgage broker. Testimony was taken from Ms. Shuler, Investigator Middlebrooks, and Respondent Carolina.

4. I take administrative notice of the contents of the Order dated May 7, 1999, for Docket No. 9907.

### **CONCLUSIONS OF LAW**

1. I find that the Notice given to Respondents was sufficient under the Administrative Procedures Act.

2. I find that Respondent Carolina has in the past been guilty of engaging in unlicensed

mortgage loan broker activity. *See* Order of May 7, 1999 in Docket No. 9907.

3. I find that there is adequate evidence that Respondent Carolina engaged in unauthorized mortgage loan broker activity in connection with his employment or purported employment with Sunset. (Exhibit 8, testimony of Middlebrooks). I am aware of Respondent Carolina's assertions that he signed the Compliance Review Maintenance form in the capacity of property owner and not an employee of Sunset's Georgetown location. I am also aware of his arguments that he sought to do business in the "net branch concept." Respondent Carolina's explanation of the "net branch concept" was not entirely clear to me. Suffice it to say, if he intends to participate in the business of "soliciting, processing, placing or negotiating mortgage loans for others or offering to process, place, or negotiate mortgage loans for others," he must qualify as a broker or a broker employee under the Mortgage Loan Broker Act as set forth in the definitions of *S.C. Code Ann.* §§ 40-58-20 (3) and (4). If "net branch" means acting as an agent for a bank or some other entity, he may need to acquire other licenses as set forth under South Carolina law.

4. Respondent Carolina's violations, as I understand them, and viewed in the light most favorable to the Petitioner, would appear to indicate that he engaged in unlicensed mortgage brokering activity with regard to Docket No. 9907 and with regard to his employment with Sunset. While I am convinced that Respondent Carolina may have been less than fully forthcoming regarding these incidents to his perspective employers and the Petitioner, I do not see this behavior as supporting a separate charge of lack of character and fitness permanently barring broker employment, nor does it appear to me that the Petitioner has provided sufficient evidence of a lack of character and fitness. As I indicated in my Order in Docket No. 9907, the deficiencies, though serious, did not appear to me to merit a permanent bar from working for a broker. My Order was

time specific and indicated that I would have given Respondent Carolina a suspension of no more than six months had similar facts come to me in a posture of the Petitioner requesting suspension or revocation. I do not read the Order to make payment of the fine owing to the Insurance Department as a prerequisite to ever applying to work as a mortgage loan broker or broker employee. In fact, I considered the testimony and the fine in the overall facts of that case, also in consideration of Respondent Carolina's uncontested explanation that the fine had not been paid because the licenses were going to be surrendered anyway. The current situation in which Respondent Carolina has simply failed to pay what appears to be a non-criminal fine is different from those cases where I have held that persons with criminal convictions seeking the right to work as brokers or broker employees must demonstrate that any victims of their crime have been reimbursed prior to certification to work as a broker or broker employee. Respondent Carolina's testimony, that the consumer was ultimately reimbursed, likewise does not appear to be contested.

5. Unlicensed mortgage loan broker activity is a serious matter. As I pointed out in the prior Order, it may have legal complications for the company a broker works for, and in that case showed evidence of an intentional circumvention of the regulations. The evidence in this most recent matter, while not unambiguously establishing intentional and repeated violations, clearly indicates that he sought to engage in mortgage loan broker activity and, once questioned, engaged in business activities sufficiently resembling mortgage loan broker activities such that they should have been fully explained to his former employer and to the Petitioner. While I acknowledge that these deficiencies should not necessarily follow Respondent Carolina around for the rest of his professional career, I am nevertheless concerned about the continuing issue of unlicensed mortgage loan brokering activity. If in the future Respondent Carolina makes application to work

for a licensed loan broker; if it appears to the Petitioner that the application to work as an employee of a licensed loan broker has been submitted by Respondent Carolina *prior to any* mortgage loan brokering activity; if it appears that with regard to such application Respondent Carolina has truthfully and forthrightly answered all factual questions posed in the application and has fully informed his prospective employer of these two dockets and my findings in them; and it appears to the Petitioner that no other activity relating to crimes or relating to character or fitness have arisen other than those referred to in these two dockets, then it does not appear to me that there would be sufficient reason for denying Respondent Carolina's application to work as an employee of a licensed broker based on the evidence in these two records. I decline to find that Respondent Carolina has intentionally and repeatedly violated the Mortgage Loan Broker Act because, as much as Respondent Carolina's activity on behalf of Sunset is not unambiguously violative, the only activity clearly violative was set forth in Docket No. 9907. I likewise decline to permanently bar him from certification to work as a employee or owner of a licensed broker as provided for in *S.C. Code Ann.* §§ 40-58-80 (C) and (F).

It is therefore ordered that Respondent Carolina cease and desist operating in violation of the Mortgage Loan Broker Act, including any and all mortgage loan broker activity until such time as he has applied for and received authority to work for a licensed broker as set forth above. As indicated above, all requested relief against Sunset is now moot.

AND IT IS SO ORDERED.

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Philip S. Porter, Administrator

Columbia, South Carolina  
\_\_\_\_\_, 2001